

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:       H. Wayne Vaiden, Jr.                                 )  
              Ward 072, Block 045, Parcel 00101         ) Shelby County  
              Commercial Property                                 )  
              Tax Year 2005   )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$80,000	\$ -0-	\$80,000	\$32,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 20, 2006 in Memphis, Tennessee. In attendance at the hearing were H. Wayne Vaiden, Jr., the appellant, Gerald Harkins, a commercial real estate broker and Shelby County Property Assessor's representative Corey Ware.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of an unimproved 2.42 acre tract of land located at 0 James Road in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$11,000. In support of this position, the taxpayer argued that his December 20, 2004 purchase of subject property at public auction for \$11,000 constitutes the best indicator of market value. In addition, Mr. Harkins testified that he has been marketing subject property since the taxpayer's purchase. According to Mr. Harkins, the highest offer received to date was for \$38,000 the day before the hearing. Mr. Harkins also testified concerning the assessor's appraisals of other tracts in the immediate area.

The assessor contended that subject property should be valued at \$80,000. In support of this position, three comparable sales were introduced into evidence. Mr. Ware also noted that subject property is zoned commercially whereas the tracts discussed by Mr. Harkins are zoned residentially.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$50,000 based upon the collective proof.



Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the State Board of Equalization has historically rejected auction sales as good indicators of market value. For example, in *D.H. & D.M. MacDermid* (Marshall Co., Tax Year 1991) the Assessment Appeals Commission refused to adopt the taxpayer's argument that the price he paid at public auction should be adopted as the basis of valuation. The Commission stated that "[w]e believe auctions provide uncertain evidence of fair market value because the short offering period inevitably limits the number of potential buyers compared to nonauction sales." Final Decision and Order at 3. Similarly, in *William J. Groom* (Davidson County, Tax Year 1991) the Commission once again declined to accept the price paid at auction as indicative of market value reasoning in pertinent part that:

... The taxpayer bought the subject property at auction on May 17, 1991, for \$26,400, from First American Bank. He contends this represents the appropriate fair market value of the property.

Recent selling prices, of properties comparable to the subject, are well regarded evidence in valuation proceedings. Mr. Groom's citation of the recent sale of the subject property certainly presents one indication of the value for the property, but as the administrative judge pointed out, auction sales are open to question because of the limited exposure of the property to the market.

Final Decision and Order at 1.

Historically, the State Board has adhered to a market value standard in the review of property assessments. See Appeals of *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal of the jurisdiction for the tax year in controversy.<sup>1</sup> But the Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in the *Appeal of Stella L. Swope* (Davidson Co., Tax Year 1993 and 1994, Final Decision and Order, December 7, 1995), the Commission reasoned as follows:

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<sup>1</sup> See Tenn. Code Ann. § 67-5-1604 – 1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.



The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Id. at p. 2.

The administrative judge finds that January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds that an offer received on September 19, 2006 is irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Ironically, the administrative judge finds that if the offer was relevant it certainly undercuts the taxpayer's contention that subject property was worth only \$11,000 on January 1, 2005.

The administrative judge would normally accord greatest weight to the assessor's comparable sales. However, those sales have not been adjusted in accordance with generally accepted appraisal practices despite their superiority. For example, two of the comparables are corner lots and the other comparable has much more frontage than the subject.

The administrative judge finds that when the relevant proof is viewed collectively, the preponderance of the evidence supports adoption of a fair market value of \$50,000 as of January 1, 2005.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$50,000	\$ -0-	\$50,000	\$20,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**”

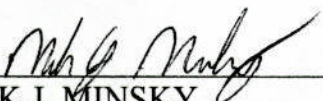


Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of September, 2006.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. H. Wayne Vaiden, Jr.  
Tameaka Stanton-Riley, Appeals Manager